

## **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA REFORMULATED GASOLINE REGULATIONS REGARDING WINTER OXYGEN REQUIREMENTS IN THE LAKE TAHOE AIR BASIN AND LABELING PUMPS DISPENSING GASOLINE CONTAINING MTBE**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the California Reformulated Gasoline Regulations. The proposal would (1) rescind in the Lake Tahoe Air Basin the minimum standard for the oxygen content of gasoline in the winter, and (2) on a statewide basis, require the labeling of retail gasoline pumps dispensing gasoline containing methyl tertiary-butyl ether (MTBE), and require that persons delivering gasoline containing MTBE to retailers must provide documentation indicating the presence of MTBE in the gasoline.

Date: June 24, 1999

Time: 9:30 a.m.

Place: Board Hearing Room, Lower Level  
2020 L Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:30 a.m., June 24, 1999, and may continue at 8:30 a.m., June 25, 1999.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board by June 14, 1999 at (916) 322-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

### **INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW**

#### **Proposed Actions and Sections Affected**

Proposed amendment to section 2262.5 and addition of section 2273 in title 13, California Code of Regulations (CCR).

#### **Background**

Over the past two decades, oxygenates have been used to increase the volume and octane of gasoline. More recently, oxygenates have been used as an emission control strategy to reduce emissions of carbon monoxide (CO) and, to a lesser extent, hydrocarbons from motor vehicles in response to federal and state gasoline regulations. Most California gasoline at the present time is oxygenated, and MTBE is by far the most common oxygenate.

The 1990 amendments to the federal Clean Air Act (CAA) added section 211(m), which conditionally required states having areas with federally-designated unhealthy levels of CO to establish a program requiring that gasoline in most of those areas contain minimum levels of oxygen in the wintertime, when CO concentrations are the highest. There were eight such areas in California. The ARB adopted regulations requiring that all California gasoline contain at least 1.8 percent by weight oxygen during specified winter months, starting November 1992. Since that time, ambient CO concentrations in the state have declined significantly, because of the replacement of higher polluting older vehicles with much cleaner newer vehicles and the wintertime oxygenates program.

In March 1998, the U.S. Environmental Protection Agency (U.S. EPA) granted ARB's request that all federal CO nonattainment areas in California be redesignated to attainment except Los Angeles - South Coast Air Basin. The ARB determined that it was no longer necessary for wintertime gasoline to be oxygenated in order to maintain attainment of the federal CO standard in most of these areas. As a result, in August 1998, the Board amended its regulations to eliminate the minimum oxygen content requirement for wintertime gasoline sold in most CO attainment areas. However, in order to ensure maintenance of the federal and state ambient CO standards, the wintertime oxygen requirements were continued until January 31, 2000 for the Lake Tahoe Air Basin and Fresno and Madera counties. The wintertime oxygen requirements remain unchanged in Los Angeles, Orange, Riverside, San Bernardino, Ventura and Imperial counties.

The CAA Amendments of 1990 also directed U.S. EPA to adopt federal reformulated gasoline (RFG) regulations, applicable starting January 1995. The U.S. EPA's regulations include specifications for oxygen and benzene content, and require reductions in summertime emissions of volatile organic compounds and year-round emissions of toxic air pollutants. Federal RFG was initially mandated in the nine major metropolitan areas of the country with the worst ozone pollution, including the greater Los Angeles area and San Diego County. The Sacramento metropolitan area was added in June 1996. About 70 percent of all gasoline now sold in California must meet the federal RFG standards, including a year-round requirement for at least 2.0 percent by weight oxygen (or 2.1 percent by weight on average).

The ARB also administers the California Phase 2 RFG (CaRFG) regulations, which became applicable March 1996. These regulations contain gasoline specifications for eight gasoline properties: sulfur, benzene, aromatic hydrocarbons, olefins, Reid vapor pressure (RVP), T50, T90, and oxygen. The CaRFG regulations allow refiners to specify alternative formulations for different batches of gasoline as long as each formulation is shown using the California Predictive Model to result in emissions of hydrocarbons, oxides of nitrogen, and potency-weighted toxics no greater than emissions from gasoline having the specifications set forth in the regulations. While the "default" specification for minimum oxygen content is 1.8 percent by weight, a refiner may use the Predictive Model to reduce or eliminate oxygen, except when the wintertime requirements apply.

Although there are several oxygenates that can be used to meet the federal and state oxygen requirements in gasoline, MTBE is used most frequently — in 1996, over 95 percent of California gasoline was blended with MTBE. In California and other parts of the U.S., there have been increased environmental and health concerns about the use of MTBE and other ether-based oxygenates in gasoline. In 1997, Senate Bill 521 (Mountjoy) was enacted, directing the University of California to conduct a study of the health and environmental risks and benefits of MTBE in gasoline as compared to other oxygenates. SB 521 also required the Governor to take appropriate action based on the findings of the report.

In consideration of the University of California report, public testimony and other relevant information, on March 25, 1999, Governor Davis issued Executive Order D-5-99, in which he found that, “on balance, there is significant risk to the environment from using MTBE in gasoline in California.” The Executive Order directed, among other things, that MTBE be phased-out in California by December 31, 2002, that the ARB evaluate the necessity for wintertime oxygenated gasoline in the Lake Tahoe Air Basin, and that the ARB adopt regulations requiring prominent identification on gasoline dispensers containing MTBE. The proposed amendments to be considered at the hearing have been developed in response to the Governor’s Executive Order.

### **Proposed Amendments**

The ARB staff is proposing that the Board:

1. *Eliminate the wintertime oxygen requirement in the Lake Tahoe Air Basin prior to October 1, 1999, so that gasoline in the winter of 1999-2000 will no longer be subject to the requirement.*

This amendment will facilitate prompt removal of MTBE of gasoline distributed in the Lake Tahoe Air Basin, where a number of drinking water wells have been shut down due to threatened contamination by MTBE. ARB staff’s updated analysis indicates that elimination of oxygen in gasoline in the Lake Tahoe Air Basin this coming winter should not result in an exceedance of the federal or state ambient air quality standards for CO.

2. *On a statewide basis, require the labeling of retail pumps dispensing gasoline containing MTBE, and require that persons delivering gasoline containing MTBE to retailers must provide documentation indicating the presence of MTBE in the gasoline.*

Currently, the ARB does not require the labeling of gasoline pumps dispensing oxygenated gasoline. However, there are other state and federal labeling requirements for both oxygenated and reformulated gasoline. ARB staff is proposing that the Board adopt new labeling requirements for gasoline pumps at retail outlets dispensing cleaner-burning gasoline containing MTBE in concentrations greater than 0.3 volume percent. The proposed labeling requirements would require the posting of a label containing the words “Contains MTBE (METHYL TERTIARY BUTYL ETHER)” in a conspicuous location on the gasoline pump, and would specify appearance and durability criteria. For purposes of compliance, the concentration of

MTBE in gasoline would be determined either through direct measurement using American Society for Testing and Materials (ASTM) Method D 4815-94a, or record keeping of gasoline deliveries and the number of times the gasoline storage tank has been refilled with gasoline containing less than 0.3 volume percent MTBE. These requirements would enable motorists to make a more informed choice in deciding what gasoline to purchase. Given the environmental concerns many Californians have about MTBE, the requirements would enable market mechanisms to help speed the removal of MTBE from California gasoline.

The proposed regulation would also provide that any person delivering gasoline containing at least 0.3 volume percent MTBE to a retail outlet must identify the presence and volumetric amount of MTBE in the gasoline in the bill of lading or other written material. This element is necessary to provide retailers with the information needed to comply with the dispenser labeling requirement.

### **Comparable Federal Regulations.**

The federal RFG regulations do not apply in the Lake Tahoe Air Basin. The U.S. EPA has also adopted regulations (14 CFR § 80.35), which require gasoline pumps that dispense oxygenated gasoline under a wintertime oxygenated gasoline program be labeled during the CO control period to inform the consumer that the gasoline reduces emissions of CO.

### **AVAILABILITY OF DOCUMENTS AND CONTACT PERSON**

The Board staff has prepared a Staff Report which includes the Initial Statement of Reasons for the proposed action and a summary of the environmental and economic impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Public Information Office, Air Resources Board, 2020 L Street, Sacramento, California 95814, (916) 322-2990. The Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below. The ARB has determined that it is not feasible to draft the regulation amendments in plain English due to the technical nature of the regulation; however, a plain English summary of the proposed regulation is available from the agency contact person named in this notice, and is also contained in the Staff Report for this regulatory action.

Further inquiries regarding this matter should be directed to Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020.

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17501, Division 4, Title 2) of the Government Code, or other nondiscretionary savings to local agencies.

In preparing the regulatory proposal, the staff has considered the potential economic impacts on California business enterprises and individuals. The staff expects the proposed elimination of the wintertime oxygen requirement in the Lake Tahoe Air Basin will provide increased flexibility in meeting the CaRFG requirements and will thus have neutral to slightly positive economic impacts reformulated gasoline standards. The staff expects the proposed labeling requirements will have a minimal economic impact on large and small operators of retail gasoline outlets, and no impacts on individuals. The total expected costs for the labeling requirements over four years is \$720,000, at an average annual cost of less than \$25 for each retail outlet. The proposed amendments are not expected to affect the ability of California businesses to compete with businesses in other states.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action should have no impact on the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to Government Code section 11343.2, that the proposed regulatory action will affect small business.

Before taking action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, Post Office Box 2815, Sacramento, California 95812, no later than 12:00 noon, June 23, 1999, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

## STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code, and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, 43021, and 43101, Health and Safety Code, and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; one possible modification would be to rescind the 1999-2000 wintertime oxygen requirement in Fresno and Madera counties. In the event of such modifications, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

## CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny  
Executive Officer

Date: April 27, 1999